

Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (Text with EEA relevance)

PART I

**FRAMEWORK (GENERAL RULES FOR THE ORGANISATION OF THE SECTOR)**

TITLE III

**IMPLEMENTATION**

*Article 29*

**Penalties**

1 Member States shall lay down rules on penalties, including, where necessary, fines and non-criminal predetermined or periodic penalties, applicable to infringements of national provisions adopted pursuant to this Directive or of any binding decision adopted by the Commission, the national regulatory or other competent authority pursuant to this Directive, and shall take all measures necessary to ensure that they are implemented. Within the limits of national law, national regulatory and other competent authorities shall have the power to impose such penalties. The penalties provided for shall be appropriate, effective, proportionate and dissuasive.

2 Member States shall provide for penalties in the context of the procedure referred to in Article 22(3) only where an undertaking or public authority knowingly or grossly negligently provides misleading, erroneous or incomplete information.

When determining the amount of fines or periodic penalties imposed on an undertaking or public authority for knowingly or grossly negligently providing misleading, erroneous or incomplete information in the context of the procedure referred to in Article 22(3), regard shall be had, inter alia, to whether the behaviour of the undertaking or public authority has had a negative impact on competition and, in particular, whether, contrary to the information originally provided or any update thereof, the undertaking or public authority either has deployed, extended or upgraded a network, or has not deployed a network and has failed to provide an objective justification for that change of plan.

*Article 30*

**Compliance with the conditions of the general authorisation or of rights of use for radio spectrum and for numbering resources and compliance with specific obligations**

1 Member States shall ensure that their relevant competent authorities monitor and supervise compliance with the conditions of the general authorisation or of rights of use for radio spectrum and for numbering resources, with the specific obligations referred to in Article 13(2) and with the obligation to use radio spectrum effectively and efficiently in accordance with Article 4, Article 45(1) and Article 47.

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Competent authorities shall have the power to require undertakings subject to the general authorisation or benefitting from rights of use for radio spectrum or for numbering resources to provide all information necessary to verify compliance with the conditions of the general authorisation or of rights of use for radio spectrum and for numbering resources or with the specific obligations referred to in Article 13(2) or Article 47, in accordance with Article 21.

2 Where a competent authority finds that an undertaking does not comply with one or more of the conditions of the general authorisation or of rights of use for radio spectrum and for numbering resources, or with the specific obligations referred to in Article 13(2), it shall notify the undertaking of those findings and give the undertaking the opportunity to state its views, within a reasonable time limit.

3 The competent authority shall have the power to require the cessation of the breach referred to in paragraph 2 either immediately or within a reasonable time limit and shall take appropriate and proportionate measures aimed at ensuring compliance.

In this regard, Member States shall empower the competent authorities to impose:

- a where appropriate, dissuasive financial penalties which may include periodic penalties with retroactive effect; and
- b orders to cease or delay provision of a service or bundle of services which, if continued, would result in significant harm to competition, pending compliance with access obligations imposed following a market analysis carried out in accordance with Article 67.

The competent authorities shall communicate the measures and the reasons on which they are based to the undertaking concerned without delay and shall stipulate a reasonable period for the undertaking to comply with the measures.

4 Notwithstanding paragraphs 2 and 3 of this Article, Member States shall empower the competent authority to impose, where appropriate, financial penalties on undertakings for failure to provide information, in accordance with the obligations imposed under point (a) or (b) of the first subparagraph of Article 21(1) and Article 69, within a reasonable period set by the competent authority.

5 In the case of a serious breach or repeated breaches of the conditions of the general authorisation or of the rights of use for radio spectrum and for numbering resources, or of the specific obligations referred to in Article 13(2) or Article 47(1) or (2), where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, Member States shall empower competent authorities to prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw those rights of use. Member States shall empower the competent authority to impose penalties which are effective, proportionate and dissuasive. Such penalties may be applied to cover the period of any breach, even if the breach has subsequently been rectified.

6 Notwithstanding paragraphs 2, 3 and 5 of this Article, the competent authority may take urgent interim measures to remedy the situation in advance of reaching a final decision, where it has evidence of a breach of the conditions of the general authorisation, of the rights of use for radio spectrum and for numbering resources, or of the specific obligations referred to in Article 13(2) or Article 47(1) or (2) which represents an immediate and serious threat to public safety, public security or public health or risks creating serious economic or operational problems for other providers or users of electronic communications networks or services or other users of the radio spectrum. The competent authority shall give the undertaking concerned a reasonable opportunity to state its views and propose any remedies. Where appropriate, the competent authority may confirm the interim measures, which shall be valid for a maximum

of three months, but which may, in circumstances where enforcement procedures have not been completed, be extended for a further period of up to three months.

7 Undertakings shall have the right to appeal against measures taken under this Article in accordance with the procedure referred to in Article 31.

### *Article 31*

#### **Right of appeal**

1 Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks or services or associated facilities who is affected by a decision of a competent authority has the right of appeal against that decision to an appeal body that is independent of the parties involved and of any external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it. This body, which may be a court, shall have the appropriate expertise to enable it to carry out its functions effectively. Member States shall ensure that the merits of the case are duly taken into account.

Pending the outcome of the appeal, the decision of the competent authority shall stand, unless interim measures are granted in accordance with national law.

2 Where the appeal body referred to in paragraph 1 of this Article is not judicial in character, it shall always give written reasons for its decision. Furthermore, in such a case, its decision shall be subject to review by a court or a tribunal within the meaning of Article 267 TFEU.

Member States shall ensure that the appeal mechanism is effective.

3 Member States shall collect information on the general subject matter of appeals, the number of requests for appeal, the duration of the appeal proceedings and the number of decisions to grant interim measures. Member States shall provide such information, as well as the decisions or judgments, to the Commission and to BEREC upon their reasoned request.